

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- L0
- L1
- L2
- L3
- L4
- L5
- L6
- L7
- L8
- L9
- 20
- 21
- 22
- 23
- 24
- 25

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Omaha, Nebraska
January 19, 2023
10:16 a.m.

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For the Plaintiff:

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For the Defendant:

MR. JOSEPH L. HOWARD, ESQ.
Dornan Law Team
1403 Farnam Street, Suite 232
Omaha, NE 68102

Proceedings recorded by electronic sound recording; transcript produced by transcription via mechanical stenography.

I N D E X

Direct Cross Redirect RecrossWITNESSES FOR THE GOVERNMENT:

None

WITNESSES FOR THE DEFENSE:

None

EXHIBITS:Offered Received

None

PAGE

FINDINGS OF THE COURT..... 26

CERTIFICATE OF REPORTER..... 29

Change of Plea

1 (At 10:16 a.m. on January 19, 2023, with counsel for the
2 plaintiff present, counsel for the defendant present, and the
3 defendant present, the following proceedings were had:)

4 THE COURT: Good morning. We are on the record in
5 the matter of the United States of America vs. Nicholas A.
6 Decosta. The case number is 8:21CR193.

7 Counsel for the government?

8 MR. FERRETTI: Good morning, Your Honor.
9 Christopher Ferretti for the United States.

10 THE COURT: For the defendant?

11 MR. HOWARD: Good morning, Your Honor. May it
12 please the Court, Joe Howard on behalf and with the
13 defendant, Nicholas A. Decosta.

14 THE COURT: Mr. Decosta, good morning.

15 THE DEFENDANT: Good morning.

16 THE COURT: How are you feeling today, sir?

17 THE DEFENDANT: Good, Your Honor.

18 THE COURT: Good. Sir, you have submitted a
19 petition requesting leave to with- -- leave to withdraw your
20 previous not guilty plea and to enter a guilty plea to the
21 charge set forth in Count I of the indictment.

22 Before we proceed I must determine whether you
23 consent to proceed before me as a magistrate judge. You do
24 have a right to a change of plea hearing before the district
25 judge. Do you understand that right?

Change of Plea

1 THE DEFENDANT: Yes.

2 THE COURT: Understanding that right, do you
3 consent to proceed before me as a magistrate judge?

4 THE DEFENDANT: Yes. Wait.

5 (Indiscernible discussion in low tones.)

6 THE DEFENDANT: All right. Yes.

7 THE COURT: Okay. At the end of today's hearing I
8 will enter written findings as to what occurred in this
9 hearing. I will either recommend that your guilty plea be
10 accepted or not accepted. Do you understand?

11 THE DEFENDANT: Yes.

12 THE COURT: Okay. So you do consent to proceed
13 before me as a magistrate judge?

14 THE DEFENDANT: Yes, Your Honor.

15 THE COURT: And is it true that you wish to enter a
16 guilty plea today?

17 THE DEFENDANT: Yes, Your Honor.

18 THE COURT: I will be asking you some questions
19 about your change of plea and the facts related to this
20 charge. Before I can do that I am going to need to place you
21 under oath. Will you please stand up and raise your right
22 hand?

23 (Defendant Sworn.)

24 THE DEFENDANT: Yes.

25 THE COURT: You may be seated. Do you understand

Change of Plea

1 that you're now under oath?

2 THE DEFENDANT: Yes, Your Honor.

3 THE COURT: Do you understand that your answers to
4 my questions must be truthful?

5 THE DEFENDANT: Yes.

6 THE COURT: Do you understand that these answers
7 could be used against you if you are later charged with
8 perjury or making a false statement?

9 THE DEFENDANT: Yes.

10 THE COURT: There are two purposes for this
11 hearing. First, we must be -- we must be sure that you
12 understand the consequences of a guilty plea, that is, what
13 may happen to you as a result of your pleading guilty to this
14 charge.

15 Second, your guilty plea must be done freely,
16 voluntarily, and with -- and without any threat or force. Do
17 you understand?

18 THE DEFENDANT: Yes.

19 THE COURT: If you do not understand any questions
20 or words spoken today, please either ask me or your attorney
21 to explain them. You may consult with Mr. Howard at any time
22 during the hearing. If necessary, we'll take a recess so
23 that you can meet with him privately. Do you understand?

24 THE DEFENDANT: Yes.

25 THE COURT: What is your full name?

Change of Plea

1 THE DEFENDANT: Nicholas A. Decosta.

2 THE COURT: Are you, in fact, the defendant named
3 in the indictment in this case?

4 THE DEFENDANT: Yes.

5 THE COURT: How old are you?

6 THE DEFENDANT: Twenty-seven.

7 THE COURT: Where were you born?

8 THE DEFENDANT: Palm Springs, California.

9 THE COURT: And what's the highest level of
10 education that you have completed?

11 THE DEFENDANT: High school graduate. Yep.

12 THE COURT: Have you ever been treated for any
13 mental illness?

14 THE DEFENDANT: No.

15 THE COURT: Have you ever been treated for
16 addiction to alcohol or drugs?

17 THE DEFENDANT: Yes.

18 THE COURT: When did you last complete treatment?

19 THE DEFENDANT: Twenty-eight- -- 2016 or 2017.

20 THE COURT: Have you been able to maintain your
21 sobriety?

22 THE DEFENDANT: Since then? I would -- I mean,
23 it...

24 THE COURT: Are you maintaining your sobriety
25 currently?

Change of Plea

1 THE DEFENDANT: Currently, yes.

2 THE COURT: Have you consumed or are you under the
3 influence of any alcohol or drugs today?

4 THE DEFENDANT: No.

5 THE COURT: Are you taking any medications?

6 THE DEFENDANT: No.

7 THE COURT: Are there any medications that you're
8 supposed to be taking that you're not taking?

9 THE DEFENDANT: No.

10 THE COURT: Is there anything that I have not
11 mentioned that may be affecting your ability to think clearly
12 or to make sound decisions today?

13 THE DEFENDANT: No.

14 THE COURT: Do you think you can proceed with
15 today's hearing?

16 THE DEFENDANT: Yes.

17 THE COURT: The court has observed the demeanor and
18 conduct of the defendant and I now -- I now find him to be
19 competent to proceed with this hearing.

20 Sir, you have previously received a copy of the
21 indictment; correct?

22 THE DEFENDANT: Yes.

23 THE COURT: Have you read it, and do you understand
24 the charges against you?

25 THE DEFENDANT: Yes.

Change of Plea

1 THE COURT: Have you discussed with Mr. Howard the
2 nature of the crime charged against you in Count I of the
3 indictment?

4 THE DEFENDANT: Yeah. Yes.

5 THE COURT: That count...

6 THE DEFENDANT: Sorry.

7 THE COURT: That count charges a violation of
8 Title 21, United States Code, Section 846. Is it your
9 intent -- is it your intent to plead guilty to that charge?

10 THE DEFENDANT: Yes.

11 THE COURT: If there was a trial in this matter,
12 the government would be required to prove to a jury each
13 element of that charge beyond a reasonable doubt.

14 The elements are as follows: First, two or more
15 persons reached an agreement or came to an understanding to
16 distribute or possess with intent to distribute controlled
17 substances;

18 Second, that you voluntarily and intentionally
19 joined in that agreement or understanding either at the time
20 it was first reached or at some later time while it was still
21 in effect and;

22 Third, that at the time that you joined in the
23 agreement or understanding you knew the purpose of the
24 agreement or understanding.

25 It's also alleged for purposes of venue that the

Change of Plea

1 offense occurred in the District of Nebraska.

2 Mr. Ferretti, did I properly set forth the elements
3 of this charge?

4 MR. FERRETTI: Yes, Your Honor.

5 THE COURT: Mr. Howard?

6 MR. HOWARD: Yes, of course.

7 THE COURT: Sir, do you have any questions about
8 the nature of the charge filed against you or what the
9 government would have to prove in order to convict you of
10 this charge?

11 THE DEFENDANT: No.

12 (Indiscernible discussion in low tones.)

13 THE DEFENDANT: Do I understand it? Yeah. Yes.
14 Yes.

15 THE COURT: Okay. Let me re-ask the question. Do
16 you have any questions --

17 THE DEFENDANT: Okay.

18 THE COURT: -- about the nature of this charge --

19 THE DEFENDANT: Oh, okay.

20 THE COURT: -- or what the government would have to
21 prove in order to convict you of the charge?

22 THE DEFENDANT: No questions.

23 THE COURT: Have you discussed the facts of this
24 case and the evidence the government has against you with
25 Mr. Howard?

Change of Plea

1 THE DEFENDANT: Yes.

2 THE COURT: Have you discussed with him any and all
3 defenses that you think you may have to this charge?

4 THE DEFENDANT: Yes.

5 THE COURT: Are you fully satisfied with the
6 representation that Mr. Howard has provided to you and the
7 advice that he has given to you in this case?

8 THE DEFENDANT: Yes.

9 THE COURT: The law under which you are charged
10 does provide certain penalties that can be imposed upon
11 conviction. These penalties are as follows: You can receive
12 a prison term for a maximum term of 20 years, a fine of not
13 more than \$250,000, or both such imprisonment and a fine, a
14 supervised release term of at least three years and up to
15 life in addition to any term of imprisonment, a special
16 assessment of \$100.

17 You may be ineligible for certain federal benefits.
18 And in cases where restitution or forfeiture of property may
19 be authorized or agreed upon, the court may issue payment of
20 restitution or an order of forfeiture.

21 Mr. Ferretti, did I properly set forth the
22 statutory penalties?

23 MR. FERRETTI: Yes, Your Honor.

24 THE COURT: Mr. Howard?

25 MR. HOWARD: Yes, sir.

Change of Plea

1 THE COURT: Mr. Decosta, do you have any questions
2 about the statutory penalties that you're now facing?

3 THE DEFENDANT: Yes.

4 THE COURT: Do you have any questions about the
5 statutory penalties that you're now facing?

6 THE DEFENDANT: Oh, do I have -- no, no questions.
7 Sorry.

8 THE COURT: Thank you.

9 The United States Sentencing Commission has issued
10 guidelines that determine recommended sentencing ranges for
11 convicted federal offenders. Have you spoken to your
12 attorney about the sentencing guidelines and how they might
13 apply to your case?

14 THE DEFENDANT: Yes, Your Honor.

15 THE COURT: These guidelines are not mandatory, but
16 they are advisory. In other words, they must be considered,
17 but they do not have to be followed, and you could be
18 sentenced outside of the advisory guideline sentencing range
19 either higher or lower. Do you understand?

20 THE DEFENDANT: Yes, Your Honor.

21 THE COURT: Do you understand that the advisory
22 guideline sentencing range will not be determined until after
23 a presentence investigation report has been completed and
24 fully considered by the court?

25 THE DEFENDANT: Yes, Your Honor.

Change of Plea

1 THE COURT: Some state penal systems do allow
2 parole, which means release from prison before a person has
3 served all of the sentence imposed; however, you are in a
4 court of the United States, a federal court, and in the
5 federal system parole has been abolished.

6 Do you understand that concerning any sentence to
7 imprisonment under federal law parole does not exist and,
8 therefore, if you are sentenced to imprisonment, you will not
9 be released on parole?

10 THE DEFENDANT: I understand.

11 THE COURT: In addition to any sentence of
12 imprisonment the court must include a term of supervised
13 release to be completed after you serve your sentence.
14 During this term you will be supervised by a probation
15 officer and you must comply with certain conditions.

16 Do you understand generally what is meant by
17 supervised release?

18 THE DEFENDANT: Yes, Your Honor.

19 THE COURT: Do you understand that if you violate a
20 condition of this release your -- it may be revoked and you
21 may be returned to prison and required to serve in prison all
22 or a part of that term of supervised release without credit
23 for any time that you have been under supervision?

24 THE DEFENDANT: Yes. I understand.

25 THE COURT: Do you have any questions about

Change of Plea

1 supervised release?

2 THE DEFENDANT: No questions.

3 THE COURT: If your guilty plea is accepted, you'll
4 be found guilty of a felony. This could later work to your
5 disadvantage. For example, if you are later convicted of
6 another crime, your sentence for that crime could be
7 increased simply because of your conviction in this case.

8 Do you understand?

9 THE DEFENDANT: Yes, Your Honor.

10 THE COURT: In addition, conviction of this offense
11 may deprive you of eligibility for certain federal benefits
12 or valuable civil rights such as the right to vote, to hold
13 public office, to serve on a jury, and to possess any kind of
14 firearm. Do you understand?

15 THE DEFENDANT: Yes.

16 THE COURT: Sir, do you think you understand all of
17 the penalties that you now face under the law?

18 THE DEFENDANT: Yes.

19 THE COURT: You have reached a written plea
20 agreement with the government; correct?

21 THE DEFENDANT: Yes, Your Honor.

22 THE COURT: Under that -- under the terms of that
23 written plea agreement you have agreed to waive your right to
24 withdraw your guilty plea under Federal Rule of Criminal
25 Procedure 11(d). Under this provision normally you could

Change of Plea

1 withdraw your guilty plea before it is accepted for any
2 reason or no reason at all or after it is accepted for a just
3 and fair reason. Do you understand that you're waiving that
4 right?

5 THE DEFENDANT: Yes, Your Honor.

6 THE COURT: In addition, you have a provision where
7 you have agreed to a specific sentence under Federal Rule of
8 Criminal Procedure 11(c) (1) (C) .

9 MR. FERRETTI: Actually, Judge...

10 THE COURT: That's not true. I am looking at the
11 plea agreement right now. All agreements with regard to
12 sentencing are pursuant to 11(c) (1) (B); is that correct,
13 Mr. Ferretti?

14 MR. FERRETTI: That's right, Your Honor.

15 THE COURT: Okay.

16 MR. HOWARD: That's correct, Judge.

17 THE COURT: Okay. You do have provisions in how
18 you think the guidelines might apply to this case; however,
19 those provisions are not binding upon the court. The
20 sentence imposed by the court could very well be different
21 from the sentence that you and your attorney expect.

22 Do you understand that that fact alone would not
23 provide a basis for the withdrawal of your guilty plea?

24 THE DEFENDANT: Yes, Your Honor.

25 THE COURT: Concerning your petition to enter a

Change of Plea

1 plea of guilty, do you read, write, and understand the
2 English language?

3 THE DEFENDANT: Yes.

4 THE COURT: Did you read the petition and
5 voluntarily sign it?

6 THE DEFENDANT: Yes.

7 THE COURT: Was Mr. Howard available to you to go
8 over all of the questions and record -- properly record your
9 answers?

10 THE DEFENDANT: Yes.

11 THE COURT: Were all of the answers to the --
12 your -- the questions in the petition voluntary?

13 THE DEFENDANT: Yes.

14 THE COURT: And are they all truthful?

15 THE DEFENDANT: Yes.

16 THE COURT: And I know that there was one change
17 with regard to the question -- answer to question number 15
18 regarding the term of supervised release. Is it true that
19 you authorized that interlineation and you affixed your
20 initials to that?

21 THE DEFENDANT: Yes.

22 THE COURT: And that made it clear that your
23 supervised release term is at least three years and not more
24 than life; correct?

25 THE DEFENDANT: Yes.

Change of Plea

1 THE COURT: Do you have any questions about
2 anything in your petition?

3 THE DEFENDANT: No. I -- the supervised -- or, no.
4 I -- no. I am -- no.

5 THE COURT: Well, let's make sure. It sounds like
6 there's something that you're confused about.

7 THE DEFENDANT: Well...

8 THE COURT: Let's make sure that we understand.

9 THE DEFENDANT: Well, the supervised release at
10 three to life, I -- does that -- I mean, is it -- does it
11 just vary and depend on the judge's discretion or...

12 THE COURT: It is. Typically it's the lower end of
13 that term, but it could be as much as life.

14 THE DEFENDANT: Okay.

15 THE COURT: But it is mandatory, and so you will be
16 on supervision for at least three years --

17 THE DEFENDANT: Yeah.

18 THE COURT: -- after you serve any term of prison.
19 Do you understand?

20 THE DEFENDANT: I understand. Yeah. Understood.
21 Thank you.

22 THE COURT: Any more questions about that?

23 THE DEFENDANT: No. That was it.

24 THE COURT: With regard to your written plea
25 agreement, did you read and sign the plea agreement after

Change of Plea

1 fully discussing it with Mr. Howard?

2 THE DEFENDANT: I -- yes.

3 THE COURT: Please listen carefully. Mr. Ferretti
4 is going to summarize the terms of the plea agreement.

5 MR. FERRETTI: Okay. Mr. Decosta agrees with the
6 United States Government, our office, the United States
7 Attorney's Office, that he will plead guilty to Count I of
8 the indictment, and he does agree to the relevant conduct
9 with respect to Counts II through six of the indictment.

10 Count I charges a violation of Title 21, U.S. Code,
11 Section 846. Mr. Decosta further agrees that the weight of
12 the fentanyl referenced in paragraph 2B5 of the written
13 agreement will be included as relevant conduct for sentencing
14 purposes.

15 In exchange for his plea of guilty the United
16 States will move to dismiss Counts II through IV and the
17 forfeiture allegation as to Mr. Decosta at the time of
18 sentencing, and the United States further agrees that
19 Mr. Decosta will not be federally prosecuted in Nebraska for
20 any additional drug-trafficking crimes as disclosed by the
21 discovery material that's been provided to Mr. Howard.

22 The parties, Mr. Decosta and the United States,
23 agree to the factual basis that's set forth in the written
24 plea agreement in section 2B, and that goes through --
25 paragraphs 1 through 10, pages two through five of the

Change of Plea

1 written agreement.

2 Regarding sentencing issues, as the court indicated
3 earlier, all agreements as to sentencing issues are made
4 pursuant to Federal Rule of Criminal Procedure 11(c) (1) (B) .

5 The parties agree that Mr. Decosta should be held
6 responsible beyond a reasonable doubt for at least three- --
7 400 kilograms, but not more than 700 kilograms of converted
8 drug weight.

9 If he is found to be entitled to an offense level
10 reduction un- -- for acceptance of responsibility under the
11 guidelines, the United States will move to reduce his offense
12 level by one additional level. And that's pursuant to
13 Section 3E1.1(b) of the guidelines.

14 The parties agree that Mr. Decosta may request or
15 recommend additional downward adjustments, departures, and
16 sentence reductions under Title 18, U.S. Code,
17 Section 3553(a) .

18 The parties have no agreement concerning
19 Mr. Decosta's criminal history category.

20 Mr. Decosta does waive appeal and collateral attack
21 except in the limited circumstances set forth in section 6 of
22 the written plea agreement.

23 And those are the, I guess, most pertinent
24 portions, Your Honor.

25 THE COURT: Mr. Howard, do you agree that those are

Change of Plea

1 the pertinent terms of the plea agreement reached between
2 your client and the government?

3 MR. HOWARD: I do, Judge. Thank you.

4 THE COURT: Does the written plea agreement contain
5 all the terms of the entire plea agreement reached between
6 your client and the government?

7 MR. HOWARD: Yes, it does.

8 THE COURT: Mr. Decosta, do you agree that those
9 are the terms of the plea agreement that you have reached
10 with the government in this case?

11 THE DEFENDANT: Yes, Your Honor.

12 THE COURT: And do you agree that this written plea
13 agreement contains all terms, conditions, and promises that
14 you have reached with the government in this case?

15 THE DEFENDANT: Yes, Your Honor.

16 THE COURT: In your plea agreement you do waive or
17 give up the right to appeal your conviction and any sentence
18 imposed upon you except in certain circumstances as set forth
19 in your plea agreement. You would otherwise have a right to
20 appeal. Do you understand that you're giving up that right?

21 THE DEFENDANT: Yes, Your Honor.

22 THE COURT: You are also -- you are also waiving
23 and giving up the right to file any post-conviction
24 proceedings, again, except in certain circumstances as set
25 forth in your plea agreement.

Change of Plea

1 Do you understand that you're also giving up that
2 right?

3 THE DEFENDANT: Yes.

4 THE COURT: Mr. Howard, did you fully and
5 accurately discuss all plea offers made by the government to
6 your client with him?

7 MR. HOWARD: I did.

8 THE COURT: Sir, did you have a full opportunity to
9 consider the plea offers made by the government to you in
10 this case?

11 THE DEFENDANT: Yes, Your Honor.

12 THE COURT: After doing so, did you voluntarily
13 sign the written plea agreement with the government?

14 THE DEFENDANT: Yes.

15 THE COURT: Did anyone make any promises to you or
16 threaten you to get you to sign the plea agreement other than
17 the terms of the plea agreement itself?

18 THE DEFENDANT: No.

19 THE COURT: Do you have any questions about your
20 plea agreement?

21 THE DEFENDANT: No.

22 (Indiscernible discussion in low tones.)

23 THE DEFENDANT: No.

24 THE COURT: No que- -- no questions about your plea
25 agreement?

Change of Plea

1 THE DEFENDANT: No questions.

2 THE COURT: Okay. And the record should note that
3 you did have a chance to speak to your attorney about that.

4 So you do have certain constitutional rights which
5 you give up when you plead guilty. Please listen carefully
6 because I will be asking you whether you understand that you
7 have each of these rights and whether you voluntarily give up
8 these rights.

9 You have the right to plead not guilty to any
10 offense charged against you and to go to trial on any charge
11 filed against you in this case. You have the right to a
12 speedy and public trial. You have the right to the
13 assistance of an attorney without cost to you if you cannot
14 afford an attorney.

15 You have the right to have a trial and to have a
16 jury determine whether the government has proved beyond a
17 reasonable doubt each and every element of the charged
18 offense. You have the right to see and hear all witnesses
19 and cross-examine any person who is a witness against you.

20 You have the right to decline to testify at your
21 trial so that you cannot be compelled to incriminate
22 yourself. You do, however, have the right to testify in your
23 own defense if you choose to, and you have the right to
24 subpoena or present witnesses or other evidence to assist
25 you. Deciding not to testify or to put on any evidence at

Change of Plea

1 trial cannot be used against you.

2 Sir, do you understand that under the Constitution
3 of the United States you have and can use all of these
4 rights?

5 THE DEFENDANT: Yes, Your Honor.

6 THE COURT: Do you understand that if your guilty
7 plea is accepted there will not be a trial on the charges
8 filed against you because when you plead guilty you give up
9 your right to a trial?

10 THE DEFENDANT: Yes, Your Honor.

11 THE COURT: If your guilty plea is accepted, you
12 give up your right to challenge the manner in which the
13 government obtained its evidence against you; for example,
14 the manner in which you were questioned or the manner in
15 which you or your home, your property were searched.

16 Do you understand?

17 THE DEFENDANT: Yes.

18 THE COURT: To get you to waive these
19 constitutional rights has anyone connected with law
20 enforcement or anyone else threatened you, directly or
21 indirectly, or used any force against you or promised you
22 anything outside your written plea agreement?

23 THE DEFENDANT: No.

24 THE COURT: Have you discussed these rights with
25 your attorney?

Change of Plea

1 THE DEFENDANT: Yes.

2 THE COURT: And do you freely and voluntarily give
3 up these constitutional rights with respect to the charge set
4 forth in Count I of the indictment?

5 THE DEFENDANT: Yes.

6 THE COURT: There's no forfeiture allegation;
7 correct?

8 MR. FERRETTI: There is a forfeiture allegation,
9 but that will be dismissed pursuant to the agreement at
10 sentencing, Your Honor.

11 THE COURT: Thank you.

12 After consideration of the responses of the
13 defendant in this case to all the questions that I have asked
14 I now find that he is competent to plead. He understands the
15 nature of the charge filed against him in Count I of the
16 indictment and the possible penalty that can be imposed upon
17 conviction.

18 He understands his rights. He willingly,
19 knowingly, and voluntarily waives those rights, and he fully
20 understands the consequences of waiving those rights,
21 including the fact that there will be no trial in this case
22 because he is pleading guilty. I, therefore, accept the
23 defendant's waiver of his rights.

24 Nicholas A. Decosta, knowing and understanding
25 everything in your petition to enter a plea of guilty, your

Change of Plea

1 written plea agreement, and everything that we have discussed
2 today, how do you now plead to the charge set forth in
3 Count I of the indictment?

4 THE DEFENDANT: I plead guilty.

5 THE COURT: To get you to plead guilty to that
6 charge has anyone connected with law enforcement or anyone
7 else threatened you, directly or indirectly, used any force
8 against you or promised you anything other than what's
9 contained in your written plea agreement?

10 THE DEFENDANT: No.

11 THE COURT: Are you freely and voluntarily pleading
12 guilty to the offense charged in Count I of the indictment?

13 THE DEFENDANT: Yes.

14 THE COURT: And are you, in fact, guilty of that
15 offense?

16 THE DEFENDANT: Yes.

17 THE COURT: I am now going to ask Mr. Ferretti to
18 set forth on the record what facts the government would
19 expect to prove if there were a trial in order to convict you
20 of this charge. Please listen carefully.

21 Mr. Ferretti?

22 MR. FERRETTI: I would just ask the court's
23 indulgence. This is kind of a long factual basis. And I am
24 drawing it from the written plea agreement, Your Honor.

25 The parties have agreed to the factual basis in the

Change of Plea

1 plea agreement, and it starts: In the fall of 2019
2 investigators accessed...

3 THE COURT: One moment. One moment. The factual
4 basis is set forth in section 2B and then in paragraphs one
5 through...

6 MR. FERRETTI: Ten, Your Honor.

7 THE COURT: One through ten. This is contained on
8 pages two through five of the parties' written plea
9 agreement. The parties have stipulated to these facts in the
10 plea agreement. Does the government wish for the court to
11 accept the parties' stipulation in the plea agreement as the
12 factual basis?

13 MR. FERRETTI: Yes.

14 THE COURT: Mr. Howard, does the...

15 MR. HOWARD: No objection.

16 THE COURT: Okay. And the court has reviewed the
17 factual basis, and the court will accept the government's
18 request. I will accept that as the factual basis in this
19 case.

20 Mr. Decosta, you did stipulate to these facts as
21 set forth in the plea agreement. You do, in fact, agree to
22 those facts?

23 THE DEFENDANT: Yes.

24 THE COURT: Do you stipulate to them?

25 THE DEFENDANT: Yes.

Change of Plea

1 (Indiscernible discussion in low tones.)

2 THE DEFENDANT: Yeah, I do.

3 THE COURT: Do you agree that the government would
4 be able to prove all of these facts if the case went to
5 trial?

6 THE DEFENDANT: Yes.

7 THE COURT: Is that what happened in this case?

8 THE DEFENDANT: Yes.

9 THE COURT: And are all of these facts true?

10 THE DEFENDANT: Yes.

11 THE COURT: Mr. Ferretti, do you certify that the
12 defendant's guilty plea is freely, voluntarily, knowingly,
13 and intelligently made and that there is a factual basis for
14 his guilty plea?

15 MR. FERRETTI: Yes, Your Honor.

16 THE COURT: Any questions that you believe should
17 be posed to him?

18 MR. FERRETTI: No.

19 THE COURT: Mr. Howard, do you make the same
20 certification?

21 MR. HOWARD: I do.

22 THE COURT: Are there any questions that should be
23 posed to the defendant?

24 MR. HOWARD: There are none.

25 THE COURT: The court now finds that the defendant

Change of Plea

1 is competent and capable of entering an informed plea to the
2 charge set forth in Count I of the indictment. He is aware
3 of the nature of that charge and the consequences of his
4 guilty plea.

5 His guilty plea is knowing and voluntary and is
6 supported by a factual basis concerning each essential
7 element of that offense. I note that the parties stipulated
8 to the factual basis in the written plea agreement, and the
9 defendant both knowingly and voluntarily agreed to those
10 facts and to a waiver of a recitation of those facts on the
11 record during these plea proceedings.

12 Defendant is also aware that his answers during
13 these proceedings may be used against him if there is later a
14 charge of perjury or making a false statement.

15 Mr. Decosta, I will recommend that your guilty plea
16 be accepted, and I will order that a presentence
17 investigation report be prepared. The presentence process
18 may include an interview so that you can provide all
19 information useful in determining your sentence. It's also
20 helpful with regard to classification, programming, and
21 supervision matters.

22 Your level of cooperation and participation is very
23 important. It should be discussed with Mr. Howard. Any
24 determination concerning the plea agreement, that is, whether
25 to accept or reject the plea agreement, will be deferred

Change of Plea

1 until after the court has examined the presentence
2 investigation report and the case proceeds to sentencing.

3 I will enter an order on sentencing schedule. It
4 will be available to the parties on CM/ECF at the conclusion
5 of today's hearing. The scheduling -- I -- order will set
6 the sentencing hearing for April 26th, 2023, at nine o'clock
7 in the morning in front of Judge Buescher.

8 Defendant has been on release pending trial in this
9 matter. The court has received a release status report to
10 the court with regard to the defendant's performance while on
11 pretrial release. The report indicates that the defendant
12 has been under supervision since August 26th, 2022, and that
13 there has been no compliance issues.

14 All conditions have been met, and there have been
15 no issues or problems to report. Also indicates that
16 according to the database relied upon by pretrial services
17 that there's no new law violations that have been committed
18 by the defendant while on pretrial release.

19 Is the government seeking detention pending
20 sentencing in this matter?

21 MR. FERRETTI: No, Your Honor.

22 THE COURT: Sir, based upon your performance on
23 pretrial release I will allow you to stay on release pending
24 sentencing in this matter. I will tell you that you have to
25 follow the same conditions. Nothing has changed.

Change of Plea

1 Do you understand that?

2 THE DEFENDANT: I understand. Thank you, Your
3 Honor.

4 THE COURT: You're welcome. Do you agree to comply
5 with those conditions?

6 THE DEFENDANT: Yes.

7 THE COURT: And do you understand if there -- if
8 there's a violation they can -- you can be revoked and go
9 into jail pending sentencing?

10 THE DEFENDANT: Yes.

11 THE COURT: Okay. Anything else on behalf of the
12 government today?

13 MR. FERRETTI: No. Thank you, Your Honor.

14 THE COURT: Anything else on behalf of the
15 government -- or the defendant?

16 MR. HOWARD: No. Thank you very much, Judge.

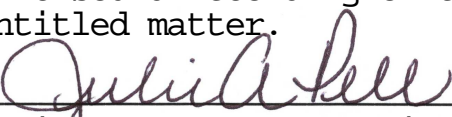
17 THE COURT: Okay. Good luck, sir.

18 THE DEFENDANT: Thank you. I appreciate it.

19 THE COURT: We're in recess. We're in recess, the
20 parties are excused.

21 (Hearing adjourned at 10:43 a.m.)

22 § § §
23 I certify that the foregoing is a correct transcript from the
24 electronic sound recording of the proceedings in the
25 above-entitled matter.

24 
25 _____
Signature of Transcriber
Julie A. Pell, RPR, CRR, CRC

2/7/2023

Date